IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 887 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KL CHAUHAN - Appellant(s)
Versus
BC PATEL - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellants,
None for the Respondent though served.,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/08/2007

ORAL JUDGMENT

1. Mr.Rajni Mehta, learned counsel for the appellants. None for the respondent though served.

2. The appellants – driver, owner and the Insurance Company, have filed this joint appeal, being aggrieved by the judgement and award dtd.6/12/1989 passed by the Motor Accident Claim Tribunal (Auxiliary), Ahmedabad (Mirzapur) in Motor Accident Claim Petition No.438 of 1985.

3. The tribunal has made an award in sum of Rs.2,18,500=00 in favour of the respondent, the appellant Insurance Company is challenging award to the extent of Rs.1,25,000=00 only. As the monetary part of the award only is under challenge, it would not be necessary for this Court to give detailed discussion of the facts.

4. Mr.Mehta, learned counsel was asked as to how a joint appeal at the instance of the driver, owner and the Insurance Company would be maintainable in view of the judgement of the Supreme Court, Mr.Mehta submitted that the appeal can be made maintainable after deleting the Insurance Company, he prays for deletion of the name of the Insurance Company.

5. It is accordingly ordered. Let the name of the appellant No.3 - Insurance Company, be deleted and necessary amendment be made by the office in the cause title of

the appeal memo within a week from today.

6. Mr.Mehta, submits that the appellant No.1 – driver was earlier ordered to be transposed as respondent No.2, vide order dtd.13/8/1994 passed in Civil Application No.2648 of 1993.

7. Unfortunately, the order passed on the said Civil Application is not available on the records and even there is no amendment in the cause title of the appeal. However, in view of the submissions made by Mr.Mehta, I accept that the appellant No.1 stands transposed as respondent No.2.

8. Mr.Mehta, learned counsel for the appellant - Bhurabhai Rambhai - owner of the vehicle, submits that the tribunal was unjustified in making such a huge award in favour of the respondent, less appreciating that the respondent was working as Dyeing Master with a Company, therefore, under the circumstances, there would be no future loss of income. He also submits that the tribunal was unjustified in not holding the respondent negligent and contributing to the accident. According to him, in view of the contributory negligence on the part of the respondent, liability should have been apportioned between the driver – Kedarsinh Lakhansinh Chauhan and

the claimant.

9. Taking up the second question first, I must immediately observe that the driver of the vehicle owned by the appellant, did not step in the witness box. In absence of the statement of the driver, it would not be possible for this Court to disbelieve the statement of the Scooterist / respondent, I reject the said submission.

10. The learned tribunal has held that the monthly income of the claimant was Rs.3500=00 and he had suffered permanent partial disability to the extent of 25%, loss of the future income would be Rs.875=00 per month or Rs.10,500=00 per year.

11. In the opinion of this Court, even if the respondent continues to be in service, his future and career stands adversely affected. If a person is 25% disabled forever, then, the master is not likely to give him all what he could otherwise acquire in future. The tribunal was justified in holding that the monthly loss could be Rs.875=00 per month and did not err in applying multiplier of 15, looking to the age of the claimant.

12. The tribunal also did not err in awarding a sum of Rs.27,000=00 towards actual loss of income for the period when the respondent could not attend to the

duty. The tribunal was justified in awarding a sum of Rs.22,000=00 towards pain, shock and suffering and also did not err in awarding Rs.12,000=00 towards medical expenses, special diets etc.

13. Taking into consideration the totality of the circumstances, I am unable to hold that any interference is called for.

14. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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